

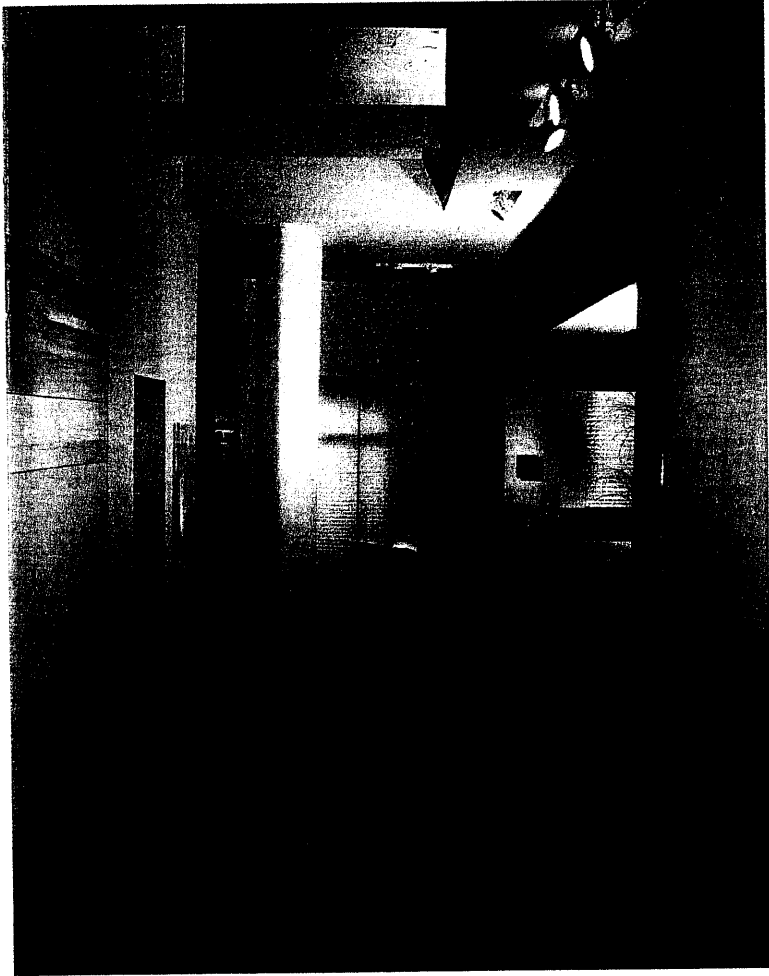


# Presidio Terrace

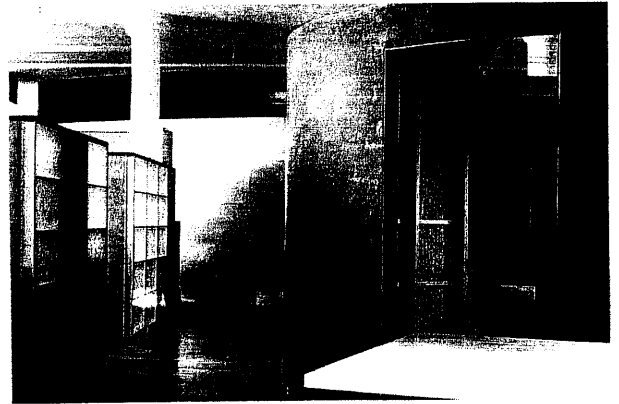
*Contemporary living in historic downtown*

# The Developer

*Peggy Noonan, Presidio Terrace LLC*



Peggy Noonan has been a developer, designer and general contractor for 28 years. Raised in New York City, she graduated from Arizona State University in 1970. In 1977, she returned to New York City and attended Parsons School of Design. While in school, Peggy started an interior design company, then became a developer, bringing her sense of place and design to the renovation of old townhomes and factories. Her design sensitivity ensured that the original buildings' architectural details were maintained, while converting them into modern loft apartments.

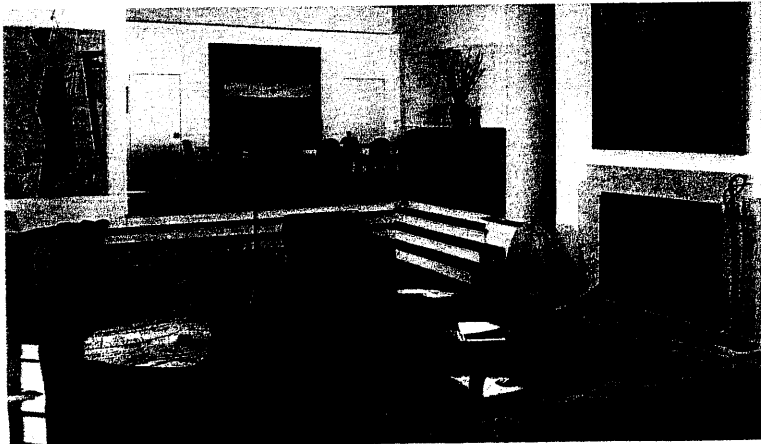


In 1995, Peggy returned to Tucson, starting Reliance Commercial Construction, Inc., building loft condominiums and numerous commercial projects. One building won the Diemer award for the best historic restoration in downtown Phoenix. Her projects have been featured in *Architectural Digest*, *Phoenix Home & Garden*, and in the book, *Total Design* by Clodagh.

Peggy has a strong belief in creating live/work spaces that support our human needs, are in harmony with our environment, draw people to them and promote warmth and joy in their lives.



With these beliefs and insights, the Presidio Terrace team was brought together to design environments that fulfill our needs and create a sense of place in historic downtown Tucson.



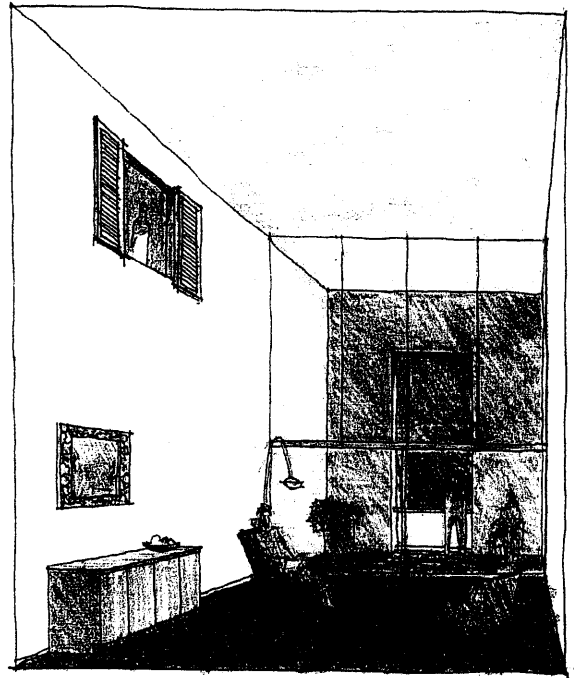
# Presidio Terrace

*Contemporary living in historic downtown*

Presidio Terrace will be a signature project in the Rio Nuevo redevelopment. It will be a part of the El Presidio Neighborhood, one of the oldest in downtown Tucson. Presidio Terrace will create an environment with winding walkways and streetscapes that is in harmony with its historic neighborhood, particularly drawing upon the Sonoran style of architecture exemplified by the Fish-Stevens House at the Tucson Museum of Art. It will draw people to it by being warm, safe and inviting. Presidio Terrace will be a true urban living environment, bridging the residential, civic and cultural areas in the heart of downtown Tucson.

There will be a selection of townhouses on Main Ave. and loft condominiums along Paseo Redondo with building heights ranging from four to six stories. "Vertical living" (houses in the sky) can be single- or multi-story, creating all types of opportunities for living and working environments that honor us as individuals.

All spaces at Presidio Terrace will feature a minimum of 10-foot ceilings, rolling metal shutters and private patios. The building will offer its residents on-site parking and an inviting entrance lobby, with elevator access to the loft condominiums.



*Loft Condominiums*



*Townhouse Patio*

## **Vertical Living at its Best:**

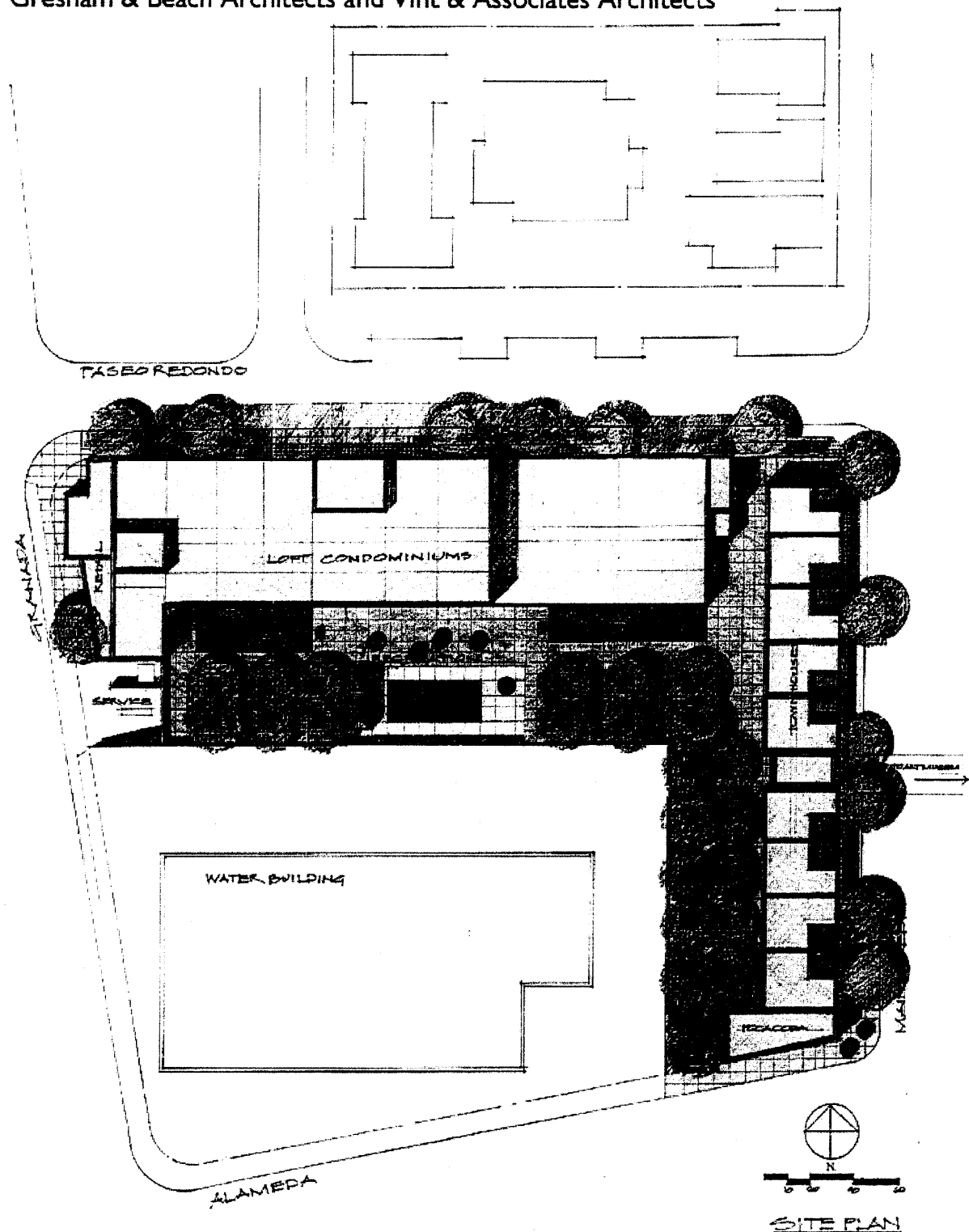
- 9 Townhomes
- 72 Loft Condominiums with Elevator
- Inviting, Grand Building Entrance
- Valet Parking On Site
- On-site Concierge/Security Service
- Creative Live/Work Spaces
- Multi-Story or Single-Story Lofts
- 10-ft. to 22-ft. Ceilings
- Flexible Square Footage
- Attractive Living Space Combinations
- Pool, Spa and Garden Amenities
- Meandering Pathways and Lovely Streetscapes with Public Art
- Private Terraces and Patios
- Energy Efficient
- Possible On-site Corner Market, Retail and Restaurants
- Full Accessibility for Handicapped and Elder Residents

For more information about Presidio Terrace, please contact:

Peggy Noonan, Developer  
Presidio Terrace, LLC.  
515 E. 24th St.  
Tucson, AZ 85713  
(520) 624-7020  
F: (520) 623-1482

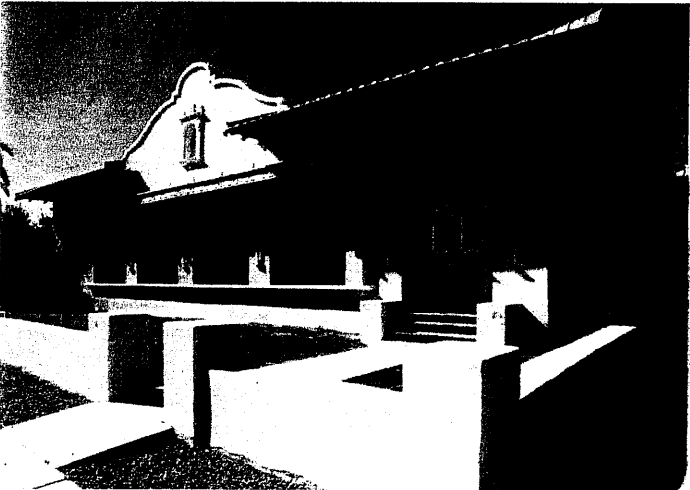
## Presidio Terrace

Gresham & Beach Architects and Vint & Associates Architects

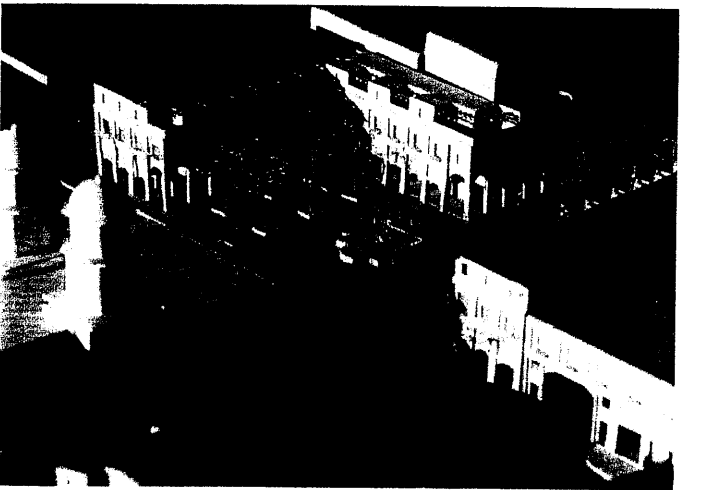


# The Design Team

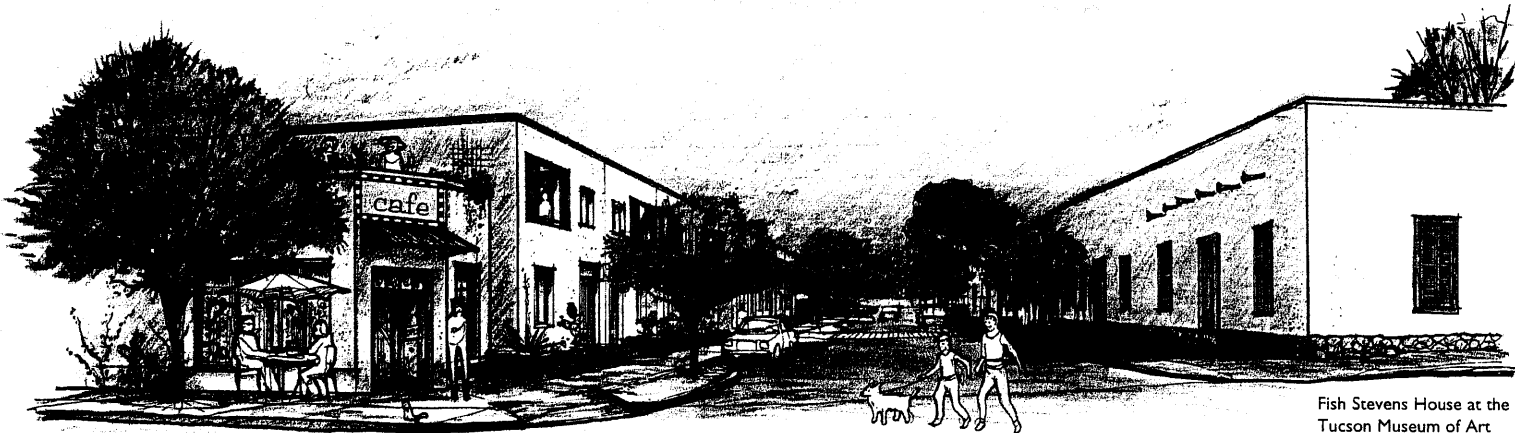
*Gresham & Beach Architects, Inc. and Vint & Associates Architects*



VINT & ASSOCIATES  
ARCHITECTS, INC.



GRESHAM & BEACH  
ARCHITECTS INC.

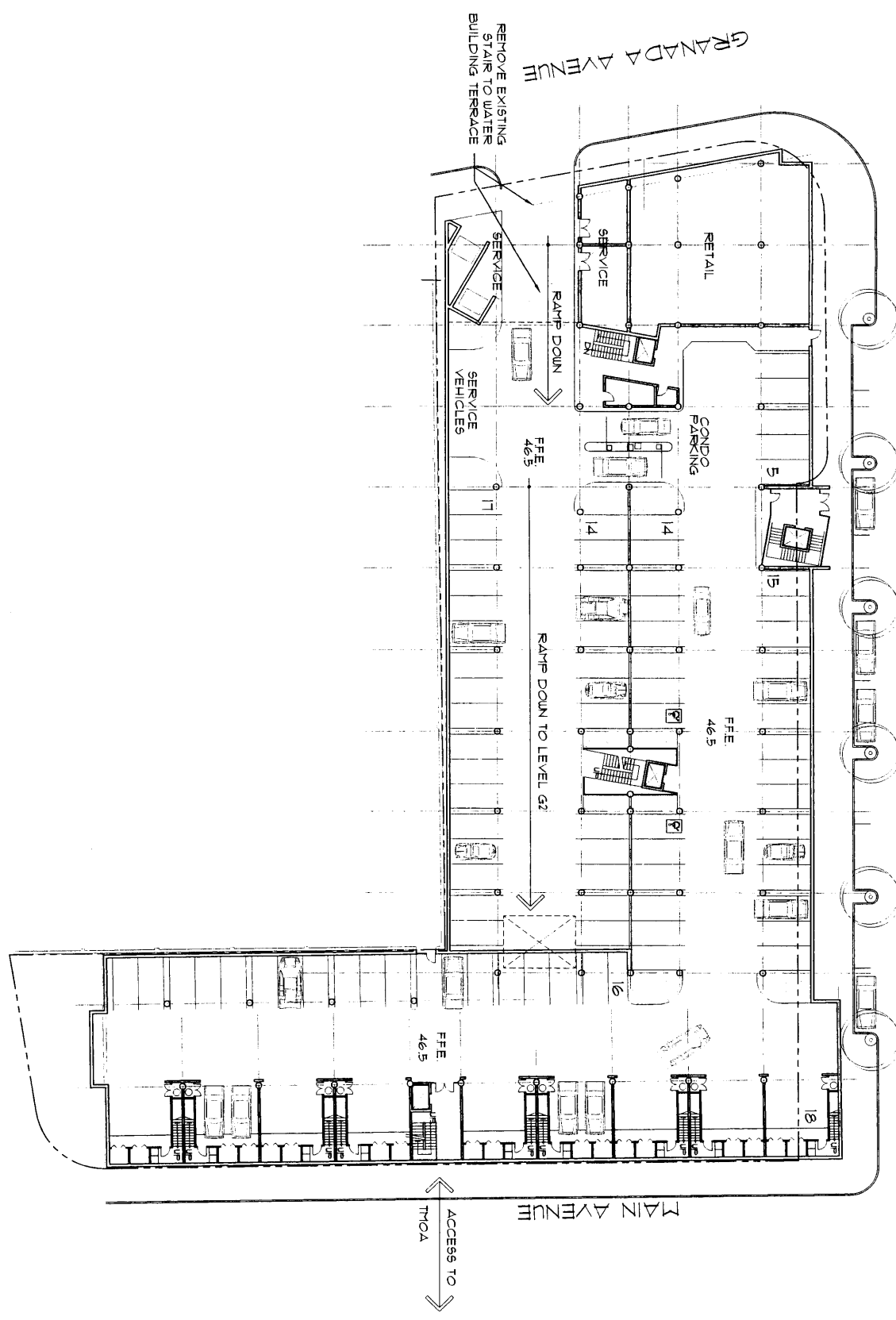


For more information about Presidio Terrace, please contact:

Peggy Noonan, Developer  
Presidio Terrace, LLC  
515 E. 24th St.  
Tucson, AZ 85713  
(520) 624-7020  
F: (520) 623-1482

# PASEO REDONDO

ATTACHMENT C  
Page 1 of 3



1 PARKING LEVEL G1  
0 10 20 30 40 50  
1/8" = 1'-0"



## PRESIDIO TERRACE DEVELOPMENT PHASE I MAIN AVENUE & PASEO REDONDO TUCSON, ARIZONA

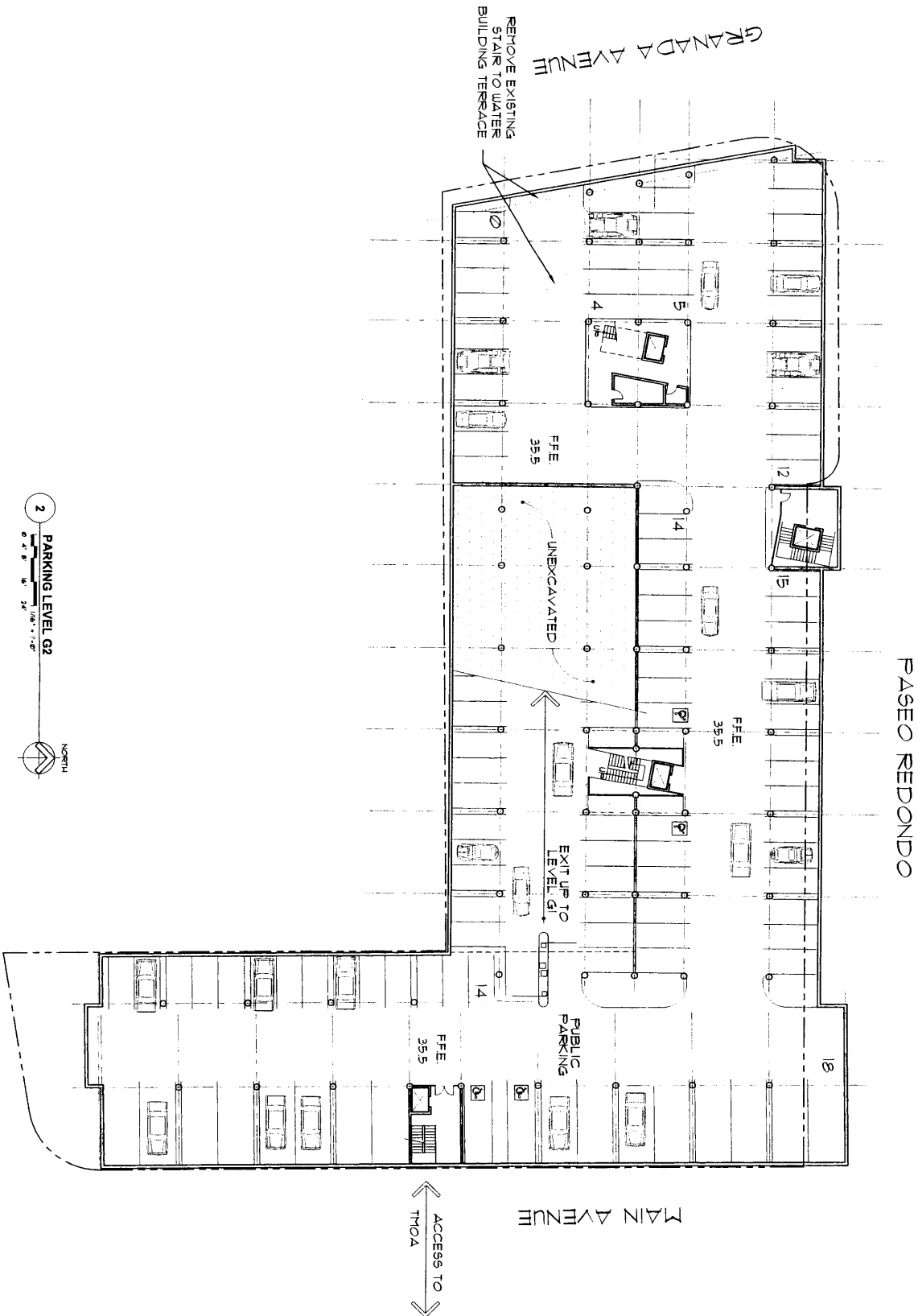
PRELIMINARY  
NOT FOR  
CONSTRUCTION

GRESHAM & BEACH  
ARCHITECTS INC.  
177 NORTH CHURCH AVENUE  
SUITE 200  
TUCSON, ARIZONA 85701  
TEL: 520.482.8888  
FAX: 520.482.8888

REVISIONS		
Num.	Date	By
1	04/04/05	JAG

Designed: JAG  
Drawn: JDC  
Checked: JDC  
Date: 20 JUL 05  
Job No: 24107.00  
PARKING LEVEL G1

A1



**PRESIDIO TERRACE DEVELOPMENT  
PHASE I**  
MAIN AVENUE & PASEO REDONDO  
TUCSON, ARIZONA

PRELIMINARY  
NOT FOR  
CONSTRUCTION

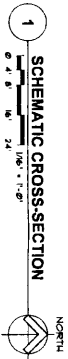
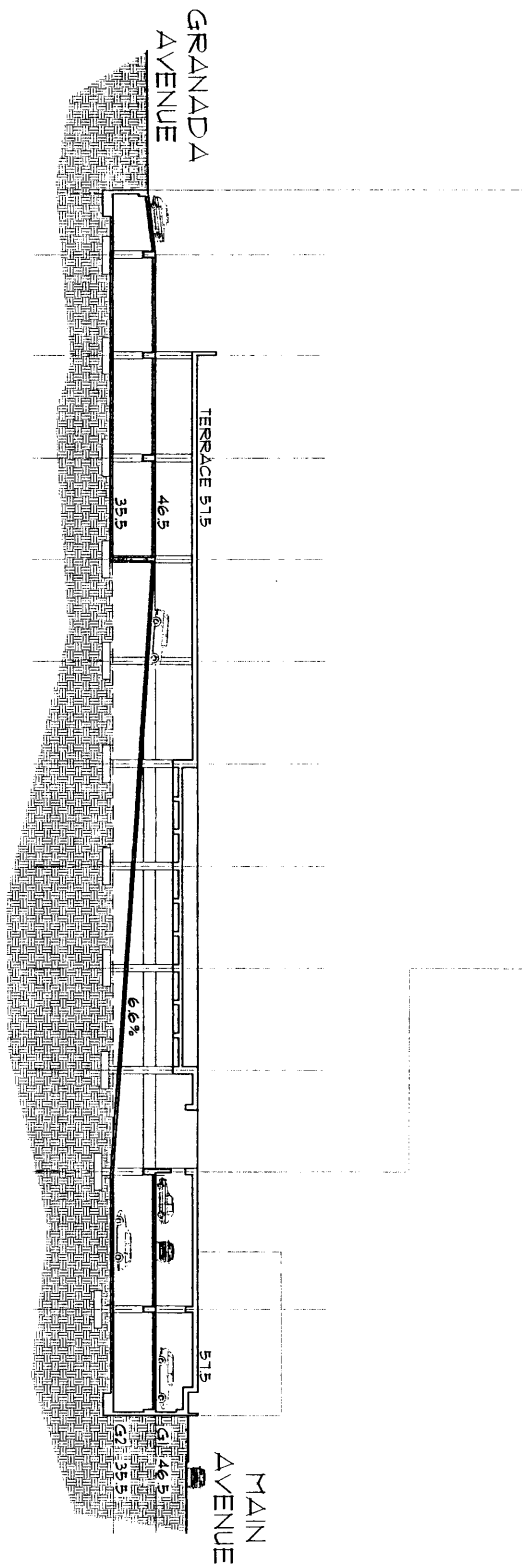
**GRESHAM & BEACH**  
ARCHITECTS, INC.  
177 NORTH CHURCH AVENUE  
SUITE 150  
TUCSON, ARIZONA 85701  
TEL: 324.881.8888  
FAX: 324.881.8888

REVISIONS		
Num	Date	By
1		JAG
2		66
3		20 JUL 05
4		24 JUL 05
5		24 JUL 05

Job No. 2410700

PARKING LEVEL G2





**PRESIDIO TERRACE DEVELOPMENT  
PHASE I**  
MAIN AVENUE & PASEO REDONDO  
TUCSON, ARIZONA

PRELIMINARY  
NOT FOR  
CONSTRUCTION

**GRESHAM & BEACH**  
ARCHITECTS INC.  
111 NORTH CHURCH AVENUE  
SUITE 300  
TUCSON, ARIZONA 85701  
TEL: 520.682.8888  
FAX: 520.682.8888

REVISIONS		
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1		JAG
2		DC
3		DC
4		DC
5		DC
6		DC
7		DC
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SCHEMATIC CROSS-SECTION

ADOPTED BY THE  
MAYOR AND COUNCIL

---

RESOLUTION NO. 20209

RELATING TO COMMUNITY SERVICES; APPROVING AND AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT AND PRESIDIO TERRACE, LLC, FOR THE DEVELOPMENT OF THE PRESIDIO TERRACE PROJECT ADJACENT TO THE TUCSON WATER BUILDING; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Intergovernmental Agreement with the Rio Nuevo Multipurpose Facilities District and Presidio Terrace, LLC, for the development of a mixed use project on City land adjacent to the Tucson Water Building, attached hereto as Exhibit A, is approved.

SECTION 2. The Mayor shall execute the said Intergovernmental Agreement for and on behalf of the City of Tucson and the City Clerk shall attest the same.

SECTION 3. The various City officers and employees shall perform all acts necessary or desirable to give effect to this resolution.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately

effective, an emergency is declared to exist and this Resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona on \_\_\_\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

  
\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
CITY MANAGER

  
DL Ditec  
10/14/2005 11:34 AM

## INTERGOVERNMENTAL DEVELOPMENT AND PURCHASE AGREEMENT FOR PRESIDIO TERRACE

THIS INTERGOVERNMENTAL DEVELOPMENT AND SALE AGREEMENT (“Agreement”) is entered into by and among the CITY OF TUCSON (“City”), the RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT (“District”), and PRESIDIO TERRACE LLC (“Developer”). City, District, and Developer are referred collectively to in this Agreement as “the Party” or “the Parties”.

### RECITALS

- A. City is a municipal corporation.
- B. District is a multipurpose facilities district established pursuant to Arizona Revised Statutes (A.R.S.) § 48-4201 *et seq.*, to revitalize downtown Tucson, financed in part with tax increment financing in accordance with A.R.S. §§ 42-5031 and 48-4237.
- C. Developer is an Arizona limited liability company.
- D. Developer intends to design and construct an integrated mixed-use project that will include multi-story residential condominiums developed with complementary first floor retail and commercial uses and with parking uses (the “Project”).
- E. City and Reliance Commercial Construction, dba Presidio Terrace LLC, entered into an Offer to Purchase accepted as authorized by City Ordinance No. 10031 (the “Offer”), attached hereto as **Exhibit “A”**. The Parties now intend that this Agreement shall supersede the Offer and all of the terms and conditions provided therein.
- F. City owns that certain real property that is currently being used as a public parking lot, generally located within the District along Paseo Redondo between Granada and Main Avenues, including all of Lot 7 (Pima County Assessor No. 116-19-231) (“Lot 7”), a portion of Lot 8 including approximately seventy (70) feet of frontage along Main Avenue (Pima County Assessor No. 116-19-232) (the “Lot 8 Portion”), as legally described and depicted in **Exhibit “B”** attached hereto. Additionally, the Property shall include certain rights-of-way that may be located adjacent to Lot 7 or Lot 8 along Paseo Redondo, Main Avenue, Alameda Street or Granada Avenue (the “ROW”) and additional portions of Lot 8, as Developer determines is necessary to complete the Project (“Additional Lot 8 Portion”), to be legally described and depicted prior to the Closing Date as provided in this Agreement. Any portion of such ROW and portion of Lot 8 so identified by Developer must be approved by the City prior to Developer including it in the Property. Lot 7, the Lot 8 Portion, the ROW, and the Additional Lot 8 Portion shall be referred to collectively in this Agreement as the “Property.”
- G. Upon satisfaction of certain terms and conditions in this Agreement, City intends to authorize conveyance of the Property to Developer.

EX   A   TO RESOLUTION NO. 20209  
CITY OF TUCSON CONTRACT NO. 0133-06

H. In exchange for conveyance of the Property from City, and commitments made by City and District herein, Developer agrees to develop the Property pursuant to this Agreement.

I. City and District intend to delegate the authority to manage this Agreement, including the right to grant extensions for contingencies and deadlines herein, to the City Manager or Manager's designee and to District's Manager or Director, respectively.

J. District's financial participation in the Project requires compliance with A.R.S. § 48-4204(B), which provides that facilities funded by a multipurpose facilities district must be owned by the district or publicly owned.

K. This Agreement is intended to be all of the following:

(1) An intergovernmental agreement pursuant to A.R.S. § 11-952 for purposes of the joint exercise of governmental powers by City and District; and

(2) A development agreement between City, District, and Developer pursuant to A.R.S. § 9-500.05 for purposes of determining development rights and obligations; and

(3) A real estate sales agreement transferring fee simple title to the Property from the City to Developer and a real estate sales agreement transferring fee simple title to certain designated portions of the Project from Developer to District.

L. This Agreement is subject to the provisions of A.R.S. § 38-511.

M. The Parties expressly find and determine that the terms of this Agreement are justified based on the other consideration provided by Developer, City and District under this Agreement, including, without limitation, the rights and liabilities conferred and imposed on the Parties and the economic development benefits to the community resulting from this Agreement.

#### **AGREEMENT**

NOW, THEREFORE, BASED ON THE FOREGOING RECITALS, WHICH ARE INCORPORATED HERE AS THE INTENTION OF THE PARTIES IN ENTERING INTO THIS AGREEMENT, the Parties agree as follows:

#### **1. Purchase and Sale.**

1.1 *Purchase and Sale.* At the Closing (as hereinafter defined), City shall sell, assign, transfer, and convey all of the Property to Developer, and Developer shall purchase and acquire all of the Property from City, in consideration of the payment of the Purchase Price (as hereinafter defined) by Developer to City and the mutual performance by City, District, and Developer of the Provisions of this Agreement.

1.2. *Purchase Price.* City shall sell Lot 7 and the Lot 8 Portion to Developer for the total amount of \$734,000.00, and shall sell the ROW and Additional Lot 8 Portion for \$15.00 per square foot (the total amount to be determined upon determination of the ROW and Additional Lot 8 Portion areas by no later than the Closing Date as defined herein) (collectively the "Purchase Price"), subject to all prorations and adjustments provided for herein.

1.3. *Escrow.*

1.3.1 *Establishment of Escrow.* City shall establish an “Escrow Account” with the TICOR Title Agency of Arizona, Inc., on or before the Effective Date (as defined herein) and shall identify an “Escrow Agent” responsible for managing that account and the Closing of this transaction (as defined herein). This Agreement shall constitute escrow instructions and a fully executed copy or counterpart copies shall be deposited with Escrow Agent for this purpose. Should Escrow Agent require the execution of its standard form printed escrow instructions, Developer and City agree to execute the same; however, such instructions shall be construed as applying only to Escrow Agent's employment and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

1.3.2 *Cancellation of Escrow.* If the escrow fails to close because of City and/or District's default, City and/or District shall be liable for all customary escrow cancellation charges. If the escrow fails to close because of Developer's default, Developer shall be liable for all customary escrow cancellation charges. If the escrow fails to close for any other reason, City, District and Developer shall each be liable for one-third (1/3) of all customary escrow cancellation charges.

## **2. Closing**

2.1 Closing. The Closing shall occur at the office of the Escrow Agent on the business day (“Closing” or “Closing Date”) that is 7 business days after the date on which the Developer successfully meets all requirements set forth in the Initial 6-Month Contingency Period set forth below in **Section 2.1.1**, unless such requirements are completed before the end of such Period, waived by the City, or extended pursuant to this **Section 2**. As provided herein, for each Contingency Period, Developer shall provide a refundable deposit or a letter of credit in lieu of cash to the City (the “Earnest Money Deposit”), the total of which shall be referred to as the “Earnest Money.” The Earnest Money shall be held in an escrow account to be established by the City, pursuant to **Section 1.3**, for such purpose (the “Escrow Account”) and managed by the “Escrow Agent” until completion of the Project as established by a temporary certificate of occupancy for either a commercial or residential unit, at which time the earnest money shall be refunded to Developer. If Developer does not meet all the requirements of each of the Contingency Periods within the time provided in this Agreement, this Agreement shall be automatically cancelled and Escrow Agent shall immediately deliver to the City all Earnest Money then deposited together with any interest earned thereon. However, upon Developer's written request to the City, to be provided at least five (5) days before the end of any Contingency Period and which shall not be unreasonably denied, the City may waive any of the requirements of any Contingency Period or may extend the time in which Developer shall meet the requirements of any Contingency Period, such time period to be determined by the City. City may further elect to extend the Closing, as provided in this Agreement, in the event of delay outside of Developer's control. Upon any cancellation of this Agreement pursuant to this **Section 2.1**, Escrow Agent shall immediately deliver to the City all Earnest Money together with any interest earned thereon.

2.1.1. *Initial 6-Month Contingency Period.* During this Contingency Period, the following shall occur:

2.1.1.1. *Earnest Money Deposit.* Developer shall provide to City a \$15,000.00 Earnest Money Deposit upon the Effective Date of this Agreement, less \$10,000.00

to offset the amount paid by Developer to City on or about May 26, 2004, as part of Developer's response and submittal to the Presidio Terrace Residential Development Request for Proposals (RFP).

2.1.1.2. *Concept Plan Approval.* Developer shall obtain City approval of conceptual architectural elevations and a preliminary development plan for the Project (the "Concept Plans"), such Concept Plans to include any alterations to the Tucson Water Building located at 310 West Alameda Street. The Concept Plans shall define the Project area, including the right of way used in the Project, in substantial conformance with the Request for Proposals for the Presidio Terrace Residential Development issued on February 11, 2004 (the "RFP"), unless the City approves a deviation from the RFP in writing. The definition shall include the scope of the Project, such as the number of residential units, the size of such residential units, special features of the Project, amenities located on and off site, the square footage and type of commercial and residential development, elevations for the Project, and the design plan for on- and off-site parking for the Project. Any right of way needed by the Developer for the Project must be identified and presented to the City for consideration of vacation and sale of such right of way prior to the end of the first three months of this Initial Contingency Period. City's approval of the Concept Plans shall not be unreasonably withheld, delayed, or conditioned except with respect to Additional Lot 8 Portions identified as needed by the Developer and the right of way that Developer intends on including in the Concept Plan. The transfer of Additional Lot 8 Portions, the right of way, or both by the City to the Developer as part of the Concept Plans shall be at the discretion of the Mayor and Council of the City. City's approval of the Concept Plans shall be deemed given if City fails to respond to an approval request within ten (10) days after such request shall have been made by Developer, provided such submission includes the following language in bold text: **Failure to respond to this submission for approval within ten (10) days of City's receipt of this submission shall be deemed an approval by City.** In the event that City does not approve of the Concept Plans or does not provide Developer with suggested revisions reasonably agreeable to Developer, then Developer's sole and exclusive remedy will be to terminate this Agreement by delivering written notice of such termination to City on or before five (5) business days after Developer's receipt of City's disapproval or suggested revisions to the Concept Plans and shall receive a refund of the Earnest Money together with any interest earned thereon, unless the Concept Plans were rejected because they deviated from the RFP, in which case the City shall retain the Earnest Money and interest. Developer's failure to timely cancel this Agreement pursuant to this Section shall be deemed Developer's acceptance of the Concept Plans as revised by City's suggested revisions and a waiver of its right to terminate this Agreement pursuant to this Section. Upon City's approval or deemed approval of the Concept Plans as submitted to City, together with City's suggested revisions thereto, such plans shall be deemed the "Approved Concept Plans" and Developer shall not be required to submit further concept plans for City approval. Any significant deviations from the Approved Concept Plans must be approved by the City in the manner outlined in this Section and City's approval of the requested changes shall not be unreasonably withheld.

2.1.1.3. *Construction Schedule and Budget.* Developer shall provide City a "Construction Schedule and Budget" for the Project. Such schedule shall show construction beginning within 60 days after the issuance of building permits (hereafter referred to as "Start of Construction") and being completed, as evidenced by a temporary certificate of occupancy for a residential unit, no later than 15 months from the date of closing, excepting reasonable delays for force majeure events.

2.1.1.4. *Marketing.* Developer shall begin marketing/presales activities including preparing a marketing plan and information describing the Project and soliciting expressions of interest, installing Project informational signage soliciting interest, and establishing a list of interested parties. Such plans and information shall be submitted to the City for review.

2.1.1.5. *Land Use Changes.* Developer shall have initiated (at its sole cost) the process to make amendments to the La Entrada Redevelopment Plan and Planned Area Development (PAD). This **Section 2.1.1.5.** shall not be considered completed until the PAD amendment is approved by the Mayor and Council. In the event the PAD amendment is not approved by the Mayor and Council or is not pursued by the Developer, the provisions of **Section 3** shall continue in full force and effect under concept plans conforming to the RFP, but shall not otherwise affect the Closing requirements.

2.1.1.6. *Soils Testing.* Developer shall complete soils testing and obtain a soils report for the Property at its sole expense.

2.1.1.7. *Environmental Testing.* Developer shall have performed any and all environmental, geotechnical, and other testing of the Property as Developer deems appropriate to satisfy its due diligence.

2.1.1.8. *Residential Unit Sale Reservations.* To the extent permitted by law, the Developer shall also deliver to the City, in the form as contained in **Exhibit "C"**, signed reservations for not less than 30 residential units within the Project.

2.1.2. *First 3-Month Contingency Period.* During this portion of the Contingency Period, the following shall occur:

2.1.2.1. *Earnest Money Deposit.* Developer shall provide to City a \$5,000 Earnest Money Deposit to be paid by the first business day of this Contingency Period.

2.1.2.2. *Preliminary Financing.* Developer shall deliver to the City a copy of Developer's preliminary construction financing commitment and deliver a statement as to how the Developer intends to meet lender equity requirements for such loans, all in a form and substance acceptable to the City. Such commitment shall include the conditions imposed by the lender (such as rates, amounts, and terms) that should be met by Developer for the financing consistent with industry standards.

2.1.2.3. *Advanced Plans.* Developer shall submit to City final architectural elevations that shall be in substantial conformance to the Approved Concept Plans as provided in **Section 2.1.1.2.** These plans shall be subject to the approval of the City, such approval not to be unreasonably withheld.

2.1.3. *Second 3-Month Contingency Period.* During this Contingency Period, the following shall occur:

2.1.3.1. *Earnest Money Deposit.* Developer shall provide to City a \$5,000 Earnest Money Deposit to be paid by the first business day of this Contingency Period.

2.1.3.2. *Construction Drawing Submittal.* Developer shall submit to the City construction drawings and plans for the Project. These drawings and plans shall be subject to the approval of the City, such approval not to be unreasonably withheld.



2.1.3.3. *Final Financing.* Developer shall deliver to City copies of Developer's final financing commitments showing that all requirements imposed by the lender have been met or that Developer can obtain a commitment of alternative financing adequate to finance the Project.

2.1.4. *Extensions.*

2.1.4.1. Developer may request one final extension of not more than 90 days of the Closing upon written notice to the City to be provided at least ten (10) days before the date on which the Closing is scheduled to occur. City shall not unreasonably deny such request if the extension is required due to delays outside of Developer's control.

2.1.4.2. Within five (5) business days after the City approves the extension as provided in this **Section 2.1.4**, Developer shall provide to City a \$5,000 nonrefundable fee or irrevocable letter of credit payable on demand to the City in lieu of cash.

2.2. *Acceptance of Property.* By taking possession from City of any or all of the Property, Developer accepts such Property in the condition existing as of the Closing. City makes no representation or warranty with respect to the condition of such Property and shall not be liable for any latent or patent defect in such Property. Developer has fully investigated the condition of such Property, including without limitation the use or occupation that may be made of such Property, City's title to such Property, and any subsurface or soil or fill conditions or any latent defects of such Property. City shall not be liable for any claims relating to the condition of such Property. City shall not be required under this Agreement to remediate any environmental or other condition of such Property.

2.3. *Closing Costs.*

2.3.1. City's Closing Costs. Upon the Closing, City agrees to pay all recording costs, one-half (1/2) of the escrow charges and the cost of the Owner's Title Policy (as defined herein) except as otherwise provided in **Section 2.3.2**.

2.3.2. Developer's Closing Costs. Upon the Closing, Developer agrees to pay one-half (1/2) of the escrow charges and that portion of the cost of the Owner's Title Policy which exceeds the cost of an extended coverage ALTA/ASCM policy in the full amount of the Purchase Price and the full cost of any additional endorsements that Developer may request.

2.3.3. Prorations. Real estate taxes, charges and assessments shall be prorated through escrow, as of 12.01 a.m. on the Closing Date, and be based upon the latest available information pursuant to **Sections 3.9 and 4.1**. Any other closing costs shall be paid by Developer and City according to the usual and customary practice in Pima County, Arizona.

2.4. *Deed.* At the Closing, City shall convey title to the Property to Developer by special warranty deed (the "Deed") substantially in the form attached hereto as **Exhibit "D"**. Also at the Closing, the City shall deliver to Developer a certificate duly executed and acknowledged by the City certifying that City is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act, as amended.

2.5. *Title and Title Insurance.*

2.5.1. *Title Report.* No later than 20 days after the Developer defines the site as required under **Section 2.1.1.2** (the Opening Date"), Escrow Agent shall deliver a current Commitment for Title Insurance or a Preliminary Title Report (the "Title Report") on the

Property from the Title Insurer to Developer and City. The Title Report shall show the status of title to the Property as of the date of the Title Report and shall be accompanied by legible copies of all documents referred to as title exceptions in the Title Report.

2.5.2. *Title Review Period.* Developer shall have a period of time ending at 5:00 PM MST, twenty (20) days after the Opening Date (the "Title Review Period"), to review the Title Report and to give City and Escrow Agent notice of any title exception which is unacceptable to Developer. Developer shall have an additional five (5) days after receipt of any amended Title Report and any underlying title exception documents relating to such amendment to give City and Escrow Agent a notice of any title exception not previously listed which is unacceptable to Developer. If Developer gives a notice of dissatisfaction as to any exception to title as shown in the Title Report or amended Title Report, City may take reasonable steps to cure such objection on or prior to the Closing, but without obligation to do so, and Developer may, at its sole and absolute discretion, elect to cancel this Agreement and obtain a full refund of the Earnest Money or elect to waive objection to the title exception.

2.5.3. *Approval or Disapproval of Status of Title.* Developer's failure to timely approve or disapprove a title exception shall be deemed an approval of title as described in the Title Report, or amended Title Report, and a waiver of Developer's right to cancel this Agreement according to this Section.

2.5.4. *Owner's Title Policy.* Provided Developer approves or is deemed to have approved the status of title to the Property, City shall cause Escrow Agent to provide Developer with an ALTA/ASCM Extended Coverage Owner's Policy of title insurance (the "Owner's Title Policy") at the Closing or as soon thereafter as is reasonably possible. The Owner's Title Policy shall be issued by the Title Insurer in the full amount of the Purchase Price, be effective as of the Closing Date, and shall insure Developer that fee simple title to the Property is vested in Developer, subject only to: (i) the usual printed exceptions and exclusions contained in such title insurance policies; (ii) the exceptions to title approved (or deemed approved) by Developer as provided for in **Paragraphs 2.5.2 and 2.5.3**; and (iii) any other matter approved in writing by Developer or resulting from the acts of Developer or Developer's agents. In the event Developer requests an extended coverage title policy to be issued, Developer shall pay any additional premium or cost therefore; and shall pay for and satisfy any conditions and requirements relating thereto.

2.6. *Closing Actions.* At or prior to the Closing, the Parties shall do and perform all acts, pay all sums and execute, acknowledge if required, and deliver all documents and instruments proper, desirable or convenient for the purpose of fully effectuating the Closing in accordance with the Provisions of this Agreement. Any such document or instrument to be executed and delivered in connection with the Closing, unless attached as an Exhibit hereto, shall be in the form, if any, regularly utilized by the Escrow Agent modified to conform with the Provisions hereof. If the Escrow Agent does not regularly utilize a form of any such document or instrument, the form of such document or instrument shall be as reasonably agreed upon by the Parties.

### **3. Developer Development Rights and Obligations.**

3.1. *Conditions of Conveyance and Development.* Developer shall initiate and proceed with development in accordance with this Agreement. Except as may be otherwise set out in this Agreement, Developer shall, at its expense, comply with all existing and future

federal, state, county and municipal laws, ordinances, rules and regulations in connection with the use, operation, maintenance and construction of all improvements on the Property.

3.2. *Development.* Developer shall construct the Project as follows:

3.2.1. *Retail.* The Project shall include retail elements along Paseo Redondo, Granada Avenue, Alameda Street and Main Avenue as may be permitted by the existing La Entrada Planned Area Development Plan (as it may be amended) and as depicted generally in the RFP.

3.2.2. *Residential.* The Project shall include a minimum of 60 condominium dwelling units on the Property.

3.2.3. *Parking.* As part of the Concept Plans, Developer must include a design plan for parking to support the Project. Except as otherwise provided in this **Section 3.2.3**, Developer is financially responsible for the construction of such parking. The design and construction of the on site-parking garage ("Parking Garage") shall conform to specifications and design criteria necessary to support a public garage, such specifications and criteria exceeding those required by City building codes.

3.2.3.1. *District Owned Parking.* In addition to the on site parking the Developer constructs to support the Project, the Developer shall construct an additional 90 parking spaces for use by the District and City in their discretion (the "District Owned Parking"). Upon completion of the Project, as evidenced by a temporary certificate of occupancy issued by the City for the Parking Garage, the Developer shall, by warranty deed, transfer ownership of the District Owned Parking to the District. The District shall only pay the Developer's actual cost of construction, design, and fees for the District Owned Parking not to exceed two million dollars, in addition to increases allowed by **Section 3.2.3.3**. The Developer shall provide design and construction plans and specifications to the City and District for its review and approval prior to soliciting bids for the Parking Garage. All such bids shall be submitted to the District and City for its review and approval, such approval not to be unreasonably withheld. The Developer must keep costs for the design, fees, and construction of District Owned Parking separate from the costs associated with other Project parking. The District's payment under this **Section 3.2.3.1** shall be made simultaneously with Developer's transfer of ownership of the District Owned Parking to the District, which shall occur upon completion of construction of the garage as evidenced by a temporary certificate of occupancy. The payment shall be based upon the submittal by the Developer to the District of its contractor and subcontractor pay requests for the portion of the garage to be owned by the District. Developer must keep separate the pay requests related to District Owned Parking and other Project parking. Payment is conditioned upon Developer delivering to District clear title to District for the District Owned Property that is free and clear of all liens, encumbrances, litigation, defenses, and other defects, District approval of such pay requests during construction and District inspection and approval of the garage during construction and at the final completion of construction. Approval of plans, specifications, bids, and pay requests as required by this Section (not to include any approval required from the Director of the City Department of Development Services) shall be deemed given if the District or City fails to respond to such approval requests with ten (10) days after such request has been received by City or District, provided such submission includes the followings bold text: **Failure to respond to this submission for approval within ten (10) days of City or District's receipt of this submission shall be deemed an approval by City and District.**

3.2.3.2. *Management of Parking Garage.* Prior to Closing, the Developer shall negotiate and enter into a separate agreement with the City that will address the long term management and operation of the parking garage, including the District Owned Parking.

3.2.3.3. *Increases to District Payment for Parking.* The amount required to be paid to Developer under **Section 3.2.4.1** may be increased by (i) an adjustment equal to the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, adjusted seasonal average, Subgroup "All Items" (1967=100) during the period beginning on the date construction of the garage begins and ending on the date a temporary certificate of occupancy is issued for use of the Parking Garage; (ii) increases due to changes in the design, fees, and construction (including building systems) of the Parking Garage as may be approved by the District, which approval shall not be unreasonably withheld; (iii) increases caused by force majeure events; and (iv) Developer's interest costs incurred to finance the design and construction of the District Owned Parking.

3.2.3.4. *Closing Costs and Title.* The District shall pay all closing costs and the costs of a title policy for the District Owned Parking, except that real estate taxes, charges, and assessments shall be prorated through escrow, as of 12.01 a.m. on the date title is transferred pursuant to **Section 3.2.3.1** and be based upon the latest available information pursuant to **Sections 3.9 and 4.1.**

3.3. *Right of Entry.* City shall grant Developer a "Right of Entry" in the form routinely used by City to allow Developer, right to enter the Property at any time during the term of this Agreement and prior to the Closing for purposes of effecting design and construction of the Property in the standard form used by City for such purposes.

3.4. *Standards for Construction of Property.*

3.4.1. Developer shall use and employ only licensed, bonded, and qualified contractors.

3.4.2. All improvements shall be constructed in a good and workmanlike manner, and constructed and maintained in compliance with all applicable laws, rules, ordinances, and regulations.

3.4.3. All Improvements shall be built to standards adopted by the City, as set forth in City Code or other development standards promulgated by authorized City officials and shall be consistent with the Approved Concept Plan. In addition to such City Code required approvals, plans for any such Improvements shall be approved by the Director of the City Department of Community Services. Approval by the Director of the City Department of Community Services shall be deemed given if the Director, or the Director's designee, fails to respond to such approval requests with ten (10) days after such request has been received by the Director, provided such submission includes the followings bold text: **Failure to respond to this submission for approval within ten (10) days of the Director's receipt of this submission shall be deemed an approval by the Director.**

3.5 *Governmental Approvals.* Developer shall obtain all necessary government approvals, permits, or licenses that are necessary to Developer's construction, operation, use, or improvement of the Property. If any certificate, permit, license, or approval issued to Developer is cancelled, expires, lapses, or is otherwise withdrawn by any such governmental authority,

Developer shall make every effort to obtain replacement permits for the governmental approval to the satisfaction of City. Failure to do so shall constitute default under this Agreement.

3.6. *Mechanics' and Materialmen's Liens.* Developer shall promptly and diligently take whatever action is necessary to remove any mechanic or materialmen's liens.

3.7. *Signs.* Prior to the Closing, Developer may place signs on the Property in conformance with applicable government regulations, with City's prior written consent to design, size, and location, said consent to be provided or denied by City within no more than ten (10) business days of request by Developer.

3.8. *Graffiti.* Developer shall be solely responsible for graffiti abatement on the Property after the Right of Entry is granted to the Developer under **Section 3.3**.

3.9. *Taxes, Fees, and Other Developer Payables.*

3.9.1. After the Closing of the Property, Developer shall bear, pay, and discharge all of the following (which are collectively referred to in this Agreement as "Impositions") as they apply to the Property at least fifteen (15) days before the last day when payment may be made without penalty or interest and before the nonpayment constitutes a default under the provisions of any mortgage on the Property after the Closing:

3.9.1.1. All taxes, assessments, water rents, rates and charges, sewer rents, license and permit, fees and all other governmental impositions and charges of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever, and each and every installment thereof, which shall prior to and during the term of this Agreement be charged, laid, levied, assessed, imposed, become due and payable or arise.

3.9.1.2. All taxes charged, laid, levied, assessed, or imposed in lieu of or in addition to the foregoing under or by virtue of all present or future laws, ordinances, requirements, orders, directions, rules, or regulations of the federal, state, county, and municipal governments and of all other governmental authorities whatsoever, and in connection with the use, occupancy, or possession of or grow due or payable out of or for the Property or any part it, or any building, appurtenances, or equipment on or in the Property or any part of it or the sidewalks or streets in front of or adjoining the Property, or any rents or additional rents payable under this Agreement.

3.9.2. To the extent permitted by law and by any mortgage, Developer shall have the right to apply for the conversion of any special assessment for local improvements to cause the same to be payable in installments, and upon such conversion Developer shall be obligated to pay and discharge punctually only such of said installments (with interest and charges thereon) as shall become due and payable during the term of this Agreement.

3.9.3. Developer shall pay, as they become due and payable, all fees, charges, taxes, and expenses required for licenses and/or permits required for, or occasioned by, Developer's use of the Property.

3.10. *Utilities.* Except as otherwise provided in this Agreement, Developer shall be responsible for obtaining any utility service agreement needed for the Property and shall pay when due all charges for utilities to the Property.

#### **4. City Development Rights and Obligations.**

4.1. *Taxes, Fees, and Other Developer Payables.* Prior to the Closing, City shall pay all Impositions (as defined herein) as they apply to the Property or, in the alternative at the City's discretion, pro rate the amount of such Impositions at time of Closing. After the Closing, Developer shall be responsible for the Impositions as provided in **Section 3.9.1.** of this Agreement.

4.2. *Sewer Hook-Ups and Water Fees.* City will cooperate with Developer and Pima County to obtain eligible credits for Developer for prior or existing sewer hook-ups located on the Property and for any credits allowed by the Tucson Water Department.

4.3. *Building Permit Fees.* City shall provide Developer with not more than \$10,000.00 in waivers of building permit fees for the Project.

4.4. *Construction Sales Tax.* City shall cooperate with Developer in seeking eligible reimbursement for the construction of any public utilities or infrastructure within or supporting the Project through construction sales tax revenues generated by the Project, consistent with existing law.

4.5. *DRB Approval.* City shall cooperate with Developer in seeking DRB approval of any and all submittals required for the Project, provided any such submittals are consistent with existing local laws and codes and the Approved Concept Plan.

4.6. *No City Future Expenditures.* City shall not be required to make any repairs or improvements to the Property following conveyance of the Property to Developer, in connection with this Agreement, the terms and conditions of all attached and referenced Agreements notwithstanding.

4.7. *Rights of Way.* Immediately upon receipt by City from Developer of the descriptions of the rights-of-way vacation required for the Project, City shall initiate the process of the vacation and sale to the extent acceptable to the City. City shall assist and cooperate with Developer in seeking approval by the Mayor and Council for such rights of way vacation and sale.

4.8. *Residential Permit Parking.* City shall designate street parking spaces along Paseo Redondo, under the City's residential parking permit program for the use of Presidio Terrace residents.

4.9. *Development Impact Fees.* Developer shall be subject to development impact fees pursuant to Ordinance 10053, adopted by the Mayor and Council on September 27, 2004, as amended by Ordinance 10095, adopted by the Mayor and Council on December 6, 2004. For the purpose of the application of the City's road development impact fees pursuant to Tucson Code Section 23A-71 *et seq.* ("Impact Fees"), the Project is located in the Central Benefit District for purposes of the Impact Fees assessed under Tucson Code Section 23A-81(8).

4.10. *Reciprocal Access and Maintenance Agreement.* City and Developer shall execute a reciprocal access and maintenance agreement prior to the transfer of the District Owned Parking to the District, to allow the Parties to have necessary access to City property and to Developer's Property around the boundaries of the Project for purposes of maintenance, repairs, and similar activities and, to the extent allowed pursuant to a temporary certificate of occupancy, the use by the City and/or District of the District Owned Parking within the Parking Garage, during and after completion of the Project.

4.11. *Purchase Price Prorations.* The purchase price of the Property specified in **Section 1.2** shall be reduced in an amount equal to Developer's projected costs incurred in constructing improvements of, on, or in the rights-of-way of Main Avenue, Paseo Redondo, Granada Avenue, or Alameda Street (the "Improvements"), but in no event more than \$400,000.00. Such Improvements may include, without limitation, improvements to road, utility, drainage, sewer, electric, water, and sidewalk infrastructure and amenities such as landscaping, pavers, lighting, transit shelters, water features, open space seating, tables, public art, and similar amenities. The Developer plans must comply with **Section 3.4.3** and include an estimated cost for such Improvements. The City may request documentation regarding the Developer's estimates prior to approving any Improvement plan and may deny a proration in the event the City determines the documentation is insufficient or the estimated costs are not reasonable.

4.12. *Temporary Revocable Easements.* It is anticipated that development of the Property will include incorporation of private improvements on the public rights-of-way. City shall process any requests for use of public rights-of-way for private purposes using a temporary revocable easement ("TRE") or permanent easement, as appropriate, and substantially in the form attached hereto as **Exhibit "E."** Annual payments for TRE's will be waived by City, but issuance of any TRE's will be subject to applicant securing right of way permits in accordance with the standards established by City's standard development review and building permit processes and approvals, as needed. Examples of the types of uses for TRE's include, but are not limited to patio seating, temporary merchandise displays, beverage and food carts, portable propane heaters, portable lighting or seasonal decorative lighting, decorative displays associated with a store or business, roof drainage elements, and awnings.

4.13. *Air Right Conveyance.* It is anticipated that development of the Property will include incorporation of private improvements placed above the public rights-of-way (for example, balconies and living space). City shall process any requests for conveyance of air rights pursuant to a deed above public rights-of-way as a standard Real Estate Services ("RES") request using a form developed specifically for the Property and mutually agreed to by the Parties within thirty (30) days after submittal of the first set of building plans for the Property. City shall waive all application fees associated therewith, and shall provide air right conveyance to the applicant at no cost to the applicant. As long as the request for conveyance or air right meets all standard development review and building permit requirements, City shall not unreasonably withhold approval of such request.

4.14. *Plan Review.* Developer may use third-party Building Code and Land Use Code review of all plans for the Property at Developer's sole cost for such review and City shall cooperate with Developer and the third-party reviewers to ensure that Developer realizes the greatest possible reduction of the time required for the review of such plans. City shall, consistent with its adopted policies, expeditiously review and, if appropriate, approve all Developer's plans, permits and other applications, including all construction and building approvals (collectively, the "Development Approval or Approvals"). City agrees to designate a project manager who shall be responsible for coordinating and expediting to the greatest extent practicable all required reviews and for assisting in the resolution of any issues in order to reduce the overall processing and approval time.

4.15. *Overlapping Development Review.* City will cooperate with Developer to identify opportunities for "overlapping" development review so as to reduce the overall time

required for plan review and Project construction. For example, City agrees that it may be possible to accelerate the submittal of certain construction plans – demolition and grading/excavation plans, underground site utility plans, foundation plans and the plans for the Parking Garage – before approval of a final plat or development plan. Subject to Developer's assumption of risk in the event of design changes, the Parties will cooperate to allow the submittal of such construction plans following the second review of the development plan.

4.16. *Condominium Ownership.* City acknowledges that Developer shall be required to submit a final plat in order to create a condominium form of ownership of individual residential units in the Project. Because of the specialized nature of a final plat that creates a condominium form of ownership, City will cooperate with Developer to identify if and how, if Developer so elects, the submittal and review of the final plat may be accelerated.

4.17. *Title Survey.* Immediately upon City approval of the Developer's definition of the Project area pursuant to **Section 2.1.1.2**, the City shall contract for the delivery to Developer of an ALTA/ASCM Land Title Survey (the "Survey") of the Property, which shall be conducted by an Arizona registered land surveyor chosen by City, shall be certified to Developer, its successors and assigns, their lenders and the Title Insurer, shall be dated not earlier than 30 days prior to the date of delivery, shall be prepared in accordance with the "Minimum Standard Detail Requirements for ALTA/ASCM Land Title Surveys" jointly established and adopted by ALTA, ACSM and NSPS in 1999, shall meet the current "Accuracy Standards for Land Title Surveys" adopted by ALTA, ACSM and NSPS, and shall otherwise be sufficient to meet Title Insurer's requirements for issuance of the Owner's Extended Coverage ALTA/ASCM Title Policy. Should there be any conflict between the legal description for the Property set forth on the exhibit to this Agreement, the legal description set forth on the Survey, and the legal description set forth on the Title Report, the legal description which the Title Insurer is willing to insure shall control.

4.18. *Archeology.* The City shall deliver to Developer a clearance letter regarding the archeological review of Lot 7 within 30 days of the effective date of this Agreement. Immediately upon City approval of the Developer's definition of the Project area pursuant to **Section 2.1.1.2**, the City shall immediately contract for the delivery to Developer of an archeological review of those portions of Lot 8 and City ROW that are defined as part of the Property.

4.19. *Environmental Information.* Within 30 days after the Effective Date, the City shall provide to Developer all information and reports it has in its possession related to soil, environmental, and title conditions, and any environmental tests or surveys, of the Property. The City shall permit the Developer to complete any necessary soils testing of the Property.

## **5. Default; Remedies.**

5.1. *Developer Default; Remedies.* Developer shall be in default under this Agreement if it fails to perform any covenant or condition of this Agreement, and does not cure such failure within thirty (30) days after written notice from City or such allowable longer period of time in the event Developer is, in the reasonable opinion of City, diligently attempting to cure the non-monetary default. In the event of default by the Developer prior to Closing, the City shall have the right to eject Developer from the Property and obtain another entity to complete the Project or other development in the City's discretion, and further City shall be entitled to, and Escrow Agent shall deliver to City, the Earnest Money or so much thereof as has been paid into



escrow by Developer, as consideration for acceptance of this Agreement, for taking the Property off the market, and as the parties' best estimate of City's damages resulting from Developer's default, but not as a penalty. In the event of default by Developer after the Closing and prior to construction, City shall have the first right to obtain title to the Property and any improvements thereon by paying Developer the price of the Property as paid by Developer to City less any liens and encumbrances on the Property or improvement and other damages sustained by the City, subject to any third party rights that may have priority over City's rights described in this Section.

5.2. *City/District Default; Remedies.* Provided that Developer is not then in default, City or District shall be in default under this Agreement if either fails to perform any covenant or condition of this Agreement that is required for either City or District, and does not cure such failure within thirty (30) days after written notice from Developer or such allowable longer period of time in the event that City or District is, in the reasonable opinion of Developer, diligently attempting to cure the non-monetary default. In the event of default by either City or District prior to Closing, then in addition to whatever other remedies are available to Developer at law or in equity, including the right of specific performance, Developer shall have the right to terminate this Agreement and the escrow, such termination to be effective five (5) days after Developer has give written notice of its intent to terminate to City and Escrow Agent. Developer shall be entitled to a return of and Escrow Agent shall deliver to Developer all Earnest Money together with any interest thereon and further City shall reimburse Developer for all expenditures made by Developer for the development of the Project as of the date of default as the parties' best estimate of Developer's damages resulting from City or District's default, but not as a penalty. In the even of default by either City or District after Closing, then Developer shall have the right to whatever remedies are available to Developer at law or in equity, including the right of specific performance.

## **6. General Provisions.**

6.1. *Damage or Destruction.* Subject to **Section 6.21**, if the Property or improvements made thereon by Developer or any portion of it is destroyed or damaged through no fault or negligence of Developer in a way that materially hinders its effective use, Developer shall make necessary repairs within a reasonable period of time, unless mutually deemed infeasible. City and District shall have no obligation to repair any damage to any portion of the Property or improvements made thereon by Developer.

6.2. *Zoning Compliance.* City and District intend that the Property be completed substantially as proposed by this Agreement. Construction upon the Property shall be in conformance with the requirements of the City Land Use Code ("LUC"). This provision shall not preclude or limit Developer's right to seek text amendments, rezoning, or variances as may be permissible under and in accordance with the LUC and Arizona law.

6.3. *Indemnity.* No Party to this Agreement shall at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of any other Party's construction, maintenance, repair, use, management, operation, condition or dismantling of the facility on the Property, except in the event of negligence or intentional acts of another Party.

6.4. *Insurance:* Developer shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance to be effective on the Closing Date:

6.4.1. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident.

6.4.2. Comprehensive commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage. This liability coverage will extend to the temporary construction sites, as defined in the right of entry agreement.

6.4.3. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Developer, its employees and agents, to comply with the provisions of state law with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

6.4.4. At the start of, during and only until completion of any Developer construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the construction of the Improvements. Upon completion of the Improvements, Developer shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Property. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

6.4.5. All policies shall be written on an occurrence and not on a claims-made basis.

6.4.6. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

6.4.7. *Additional Insured:* All policies, except for worker's compensation and all risk property, shall include City, and the officers, employees, boards, commissions, agents, attorneys, and contractors of the foregoing entities, as their respective interests may appear, as additional insured (herein referred to as the "Additional Insured"). Each policy which is to be endorsed to add Additional Insured hereunder, shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder." However, this condition does not operate to increase the insurance company's limit of liability.

6.4.8. *Evidence of Insurance:* Certificates of insurance for each insurance policy required to be obtained by Developer in compliance with this paragraph, along with written evidence of payment of required premiums shall be filed and maintained with City. Developer shall immediately advise City of any claim or litigation that may result in liability to City.

6.4.9. *Cancellation of Policies of Insurance:* All insurance policies maintained pursuant to this Agreement shall contain the following endorsement: "At least thirty (30) days prior written notice shall be given to the City of Tucson by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

6.4.10. *Insurance Companies:* All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Arizona or surplus line carriers on the State of Arizona Department of Insurance approved list of companies qualified to do business in the State of Arizona. All insurance carriers and surplus line carriers shall be rated A or better by A.M. Best Company.

6.4.11. *Deductibles/Self Insurance or Retentions:* All insurance policies may be written with deductibles, not to exceed \$50,000 unless approved in advance by City. Developer agrees to indemnify and save harmless City, the Indemnitees, and Additional Insured from and against the payment of any deductible and from the payment of any premium on any Developer insurance policy required to be furnished by this Agreement.

6.5. *Notices.* All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to City:

City of Tucson  
Community Services Department  
310 North Commerce Park Loop  
P.O. Box 27210  
Tucson, AZ 85726-7210

With copies to:

City of Tucson, City Clerk's Office  
P. O. Box 27210  
Tucson, AZ 85726-7210

City of Tucson, Real Estate Division  
Attention: John Updike  
P. O. Box 27210  
Tucson, AZ 85726-7210

City Attorney's Office  
255 West Alameda, 7th Floor  
P.O. Box 27210  
Tucson, Arizona 85726-7210

If to Developer:

Presidio Terrace LLC  
c/o: Peggy Noonan  
515 East 24th Street  
Tucson, AZ 85713

With copy to:

Mary Beth Savel, Esq.  
Lewis and Roca LLP  
One South Church Avenue, Suite 700  
Tucson, AZ 85701-1611

If to District:

Rio Nuevo Office  
52 West Congress Street,  
Tucson, AZ 85701

6.6. *Successors and Assigns.* All of the provisions of this Agreement shall inure to the benefit of and be binding upon successors and assigns of the parties to this Agreement pursuant to A.R.S. § 9-500.05(D). Any assignment of this Agreement by the Developer shall be approved by City in writing prior to any assignment, which shall not be unreasonably withheld. An assignment to any person or entity in any way affiliated with or controlled by Developer, or to any entity in which Developer is a member, partner, or shareholder, where Developer has less than or equal to a fifty (50) percent equity interest and does not retain development control of the Project shall be presumed to be unreasonable.

6.7. *No Waiver of Strict Performance.* The failure of any Party to insist upon a strict performance of any of the agreements, terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that other Parties may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants, and conditions.

6.8. *Quiet Enjoyment.* City and District covenant that as long as Developer shall faithfully perform the agreements, terms, covenants, and conditions hereof, Developer shall and may peaceably and quietly have, hold, and enjoy the Property and the rights granted by this Agreement without molestation or disturbance by or from City or District, subject, however, to all of the provisions of this Agreement and all encumbrances to which this Agreement is made subject and subordinate as herein provided.

6.9. *Authority to Execute Agreement; Authority to Manage Agreement.* The individuals executing this Agreement represent that they have full right, power, and authority to execute this Agreement on behalf of their respective Parties. Further, each Party to this Agreement covenants to the other Parties that such Party has the legal capacity and authority to enter into this Agreement and to consummate the transactions contemplated hereunder. City and District may delegate the authority to manage this Agreement, including the authority to authorize waivers or extensions of the Contingency Periods provided for herein, to the City Manager or the Manager's delegate and to the District's Manager or Director, respectively.

6.10. *No Lawsuits.* There are no actions, suits, proceedings, or investigations pending, or to the best of the Developer, City, or District's knowledge, threatened, with respect to or in any manner affecting City or District's ownership of the Property or otherwise affecting any portion thereof, or which will become a cloud on the title to the Property or question the validity or enforceability of the transaction contemplated herein.

6.11. *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the Parties pertaining to the subject matter of the Agreement and supersedes all offers, negotiations, and other agreements of any kind. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, including but not limited to the Offer or any prior Request for Proposal, are superseded and merged in this Agreement. There are no representations or understandings of any kind not set forth herein.

6.12. *Governing Law.* This Agreement shall be construed in accordance with the laws of the State of Arizona.

6.13. *Non-Severability.* The provisions of this Agreement shall not be given effect individually, and to this end, the provisions of this Agreement are not severable.

6.14. *Anti-Moratorium.* No moratorium, as that term is defined in A.R.S. § 9-463.06, shall be imposed on the Property unless it is imposed pursuant to an ordinance that complies with A.R.S. § 9-463.06, as it may be amended.

6.15. *Headings.* The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the Agreement's provisions.

6.16. *Exhibits.* Any exhibit attached to this Agreement shall be deemed to have been incorporated in this Agreement by this reference with the same force and effect as if it were fully set forth in the body of the Agreement.

6.17. *Further Acts.* All Parties to this Agreement shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

6.18. *Recordation.* This Agreement shall be recorded in its entirety in the official records of Pima County, Arizona, not later than ten days after this Agreement is executed by all Parties and an Ordinance is enacted by the Mayor and Council authorizing this Agreement.

6.19. *Amendments.* No change or addition is to be made to this Agreement except by a written amendment executed by all of the Parties. An amendment shall be recorded in the official records of Pima County, Arizona within ten days after its execution.

6.20. *Time of Essence.* Time is of the essence for this Agreement.

6.21. *Force Majeure.* Notwithstanding any other term, condition or provision of this Agreement to the contrary, if any Party to this Agreement is precluded from satisfying or fulfilling any duty or obligation imposed upon it due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of God, or other events beyond the control of such Party, the time period provided herein for the performance by such Party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events.

6.22. *Attorneys' Fees.* In the event any Party shall commence any civil action against the others to enforce or terminate this Agreement or to recover damages for the breach of any of the provisions, covenants, or terms of this Agreement on the part of the other Party, the prevailing Party in such civil action shall be entitled to recover from the other Party(s), in addition to any relief to which such prevailing Party may be entitled, all costs, expenses and reasonable attorneys' fees incurred in connection therewith.

6.23. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

6.24. *Effective Date.* This Agreement shall be considered effective on October 18, 2005.

6.25. *Term/Termination Date.* The “Term” of this Agreement shall begin on the Effective Date and terminate upon completion of the Project. Completion of the Project shall be determined by the issuance of a temporary certificate of occupancy for a retail and a residential unit of the Project.

EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005.

PRESIDIO TERRACE LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF TUCSON, an Arizona municipal corporation

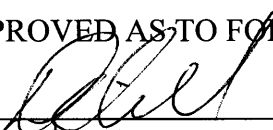
By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_



RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT,  
a political subdivision of the State of Arizona

By: Ruben D. Suarez

As: Chair

APPROVED AS TO FORM:

By: William P. Hicks III

As: District Counsel

## **EXHIBITS**

- Exhibit “A”    Offer to Purchase
- Exhibit “B”    Legal Description of the Property
- Exhibit “C”    Sales Reservation Form
- Exhibit “D”    Form of Special Warranty Deed from City to Developer
- Exhibit “E”    Form of Temporary Revocable Easement

EXHIBIT     A     TO

EX     A     TO RESOLUTION NO. 20209

## OFFER TO PURCHASE

TO: City of Tucson  
Real Estate Division  
201 North Stone Avenue, 6th floor  
Tucson, AZ 85701

Presidio Terrace

**Reliance Commercial Construction, Inc., an Arizona Corporation, or assigns** hereinafter called the BUYER(S), hereby offers and agrees to purchase from the CITY OF TUCSON, a municipal corporation, hereinafter called the CITY, at the price and subject to their terms, conditions and covenants herein stated, the following described property:

**Portions of Lots 7 and 8, LA ENTRADA, Lots 1 through 9, a subdivision in Section 12, Township 14 South, Range 13 East, Gila and Salt River Meridian, State of Arizona, Pima County, recorded in Book 37 of Maps and Plats at Page 80 in the Office of the Pima County Recorder. Full and complete legal description to be provided to escrow prior to closing, mutually agreed to by all parties hereto.**

SUBJECT TO all provisions, conditions, easements, restrictions, rights-of-way, covenants, encumbrances, obligations, liabilities, and other matters of record, and to all zoning, building or other laws or ordinances, and to any matters which would be shown by an accurate survey or inspection of the property.

The purchase price shall be Seven Hundred Thirty Four Thousand and no/100 DOLLARS (\$734,000.00) which includes the deposit tendered with this offer.

The BUYER(S) hereby tenders as a deposit the sum of Ten Thousand and no/100 DOLLARS (\$10,000.00), representing the minimum allowable deposit amount, on the following conditions:

The balance of said purchase price in the amount of Seven Hundred Twenty Four Thousand and no/100 DOLLARS (\$724,000.00) shall be paid in cash at closing, or as previously mutually modified pursuant to a development agreement between Buyer and City, anticipated to be executed prior to close of escrow.

The closing date shall be within one hundred eighty (180) days from date of acceptance of this offer by the City. If the Buyer(s) fail to fulfill their part of this instrument within ninety (90) days from the date of acceptance of this offer by the City, the deposit tendered with this offer shall be forfeited to the City. The dates noted in this section may be mutually modified pursuant to a development agreement between Buyer and City, anticipated to be executed prior to close of escrow. This sale is subject to approval by the City Manager, and if forwarded for review, subject to approval of the Mayor and Council.

Fifteen (15) days from the date of the Buyer's signature are hereby given to the City to obtain official acceptance of this offer. If accepted, the acceptance portion of this instrument shall be signed by the City and delivered to the Buyer(s) within ten (10) business days following the date of acceptance.

If this offer is not accepted, the amount of the deposit will be returned to the Buyer(s) with reasonable promptness. The escrow closing agent shall be TICOR Title Agency. City shall provide standard form of title insurance policy in the amount of the purchase price. ~~If Buyer(s) requires(s) an extended ALTA title policy, Buyer(s) shall pay for cost of ALTA survey and all costs exceeding standard form of title insurance policy.~~ Title insurance policy to be issued by TICOR Title Agency. All other title and escrow costs and expenses incidental to this transaction shall be charged to the parties in the customary manner. There shall be no adjustment in the sales price as a result of the ALTA survey. Possession of the property shall be given to Buyer(s) on closing. (PN) 405

If applicable, the Buyer(s) acknowledge(s) NOT APPLICABLE – NO BROKER/AGENT INVOLVED as his/their Broker/Agent. As a result of this sale, the City agrees to pay a commission fee on closing to said Broker/Agent. If deposit is forfeited and/or this transaction does not close, no commission will be paid. No commission fee will be paid if Broker/Agent is also a Principal/Buyer. Commission fee shall be 4% (four percent), under the terms and conditions noted herein. Commission will be paid only to qualified Arizona Licensed Brokers.

The Buyer(s) understand(s) and acknowledge(s) that the utility locations and/or dimensions shown herein and in the sales brochure are based on information believed to be reliable; however, the City does not guarantee or warrant this information. Building and occupancy permits are subject to availability of water/sewer capacity at time of actual application.

Except as specifically set forth in this Agreement, Seller has not made, nor authorized anyone to make, any warranty or representation about the present or future physical or environmental condition of the subject property and no such representation or warranty shall be implied. Buyer expressly acknowledges that no such warranty or representation has been made and that Buyer is not relying upon any warranty or representation whatsoever, except as may be expressly set forth in this agreement. Buyer acknowledges and agrees that, having been given the opportunity to inspect the property, Buyer is relying solely upon its own investigation of the property and not on any information provided or to be provided by the Seller.

Buyer further acknowledges that any information provided or to be provided by or on behalf of Seller with respect to the property was obtained from a variety of sources, and that Seller has not made any independent investigation or verification of such information, and makes no representations or warranties as to the accuracy or completeness of such information. Buyer further acknowledges that, to the maximum extent allowed by law, the sale of the subject property is made in an "as is" condition and with all faults.

Buyer shall accept the subject property "as is" and in its condition on the date of the Closing, subject only to the express provisions, if any, of this agreement. Buyer, for and on behalf of itself, and its heirs, successors, and/or assigns, hereby releases and agrees to hold harmless Seller, its Mayor and Council, Boards, Committees, and Commissions, officers and employees, from and against any and all claims that it may now or hereafter have against Seller for any cost, loss, liability, damage, expense, demand, claim, or cause of action arising or alleged to have arisen from or relating to any defect or condition, including environmental matters, affecting the property or any portion thereof. The hold-harmless provisions of this section shall survive the closing.

Transfer of property, if sold, shall be by City of Tucson form of Special Warranty Deed. All terms, covenants, conditions and provisions herein contained, including all development guidelines, shall extend to and be binding upon the parties, their assignees, heirs, devisees, personal representatives or other successors in interest, irrespective of how said interest was acquired. All conditions of sale referenced in the Request for Proposals issued by the City of Tucson in association with the conveyance of this property are made a part hereof by reference, and shall amend this Offer to Purchase accordingly.

Amendments/Additional Conditions or Contingencies:

~~\_\_\_\_\_~~  
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This instrument contains the entire agreement between the City and the Buyer(s). All understandings, conversations and communications, oral or written, between the parties hereto, or on behalf of either of them, are merged into and superseded by this instrument and shall be of no further force or effect.

DATED this 30<sup>th</sup> day of December, 2004.

  
BUYER(S) SIGNATURE

pnoonan@reliancecom.com  
E-MAIL ADDRESS

Reliance Commercial Construction, Inc.  
515 E. 24<sup>th</sup> Street  
Tucson, AZ 85713

(520) 624-7020 (520) 623-1482

ADDRESS OF BUYER

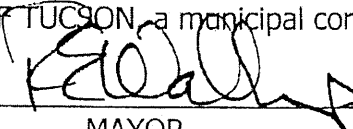
TELEPHONE & FAX NUMBER

#### ACCEPTANCE

The hereinabove offer to purchase City property at the price and according to the terms, covenants, conditions, and provisions above stated is hereby accepted pursuant to approval by the Mayor and Council. The City and Buyer agree that no party is eligible for any brokerage fee upon close of escrow.

DATED this 7 day of February, 2005

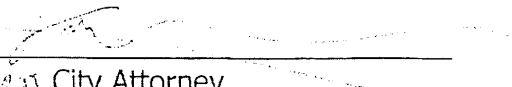
CITY OF TUCSON, a municipal corporation

By   
MAYOR

ATTEST:

By   
City Clerk

APPROVED AS TO FORM:

By   
City Attorney

OFFER AND ACCEPTANCE READ AND CONCURRED:

DATED this \_\_\_ day of N/A, 2004.

By NOT APPLICABLE  
BROKER/AGENT

# EXHIBIT B

EXHIBIT       B       TO  
EX       A       TO RESOLUTION NO. 20209



### LEGAL DESCRIPTION OF THE PROPERTY

Portions of Lots 7 and 8, LA ENTRADA, Lots 1 through 9, a subdivision in Section 12, Township 14 South, Range 13 East, Gila and Salt River Meridian, State of Arizona, Pima County, recorded in Book 37 of Maps and Plats at Page 80 in the Office of the Pima County Recorder. Full and complete legal description to be provided to escrow prior to closing, mutually agreed to by all parties hereto.

# EXHIBIT C

EXHIBIT       C       TO  
EX       A       TO RESOLUTION NO. 20209

## LOT RESERVATION

This Reservation was made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between \_\_\_\_\_ "Seller," and the undersigned as "Prospective Buyer."

The Prospective Buyer hereby reserves Lot \_\_\_\_\_ (the "Lot") in (Project Name) \_\_\_\_\_

\_\_\_\_\_ located in Pima County, Arizona and a deposit in the amount of \$\_\_\_\_\_ (maximum \$5,000.00), receipt of which is hereby acknowledged by the Seller, is made and accepted upon the following terms and conditions:

1. The deposit shall be delivered to \_\_\_\_\_, "Escrow Agent" and deposited by Escrow Agent within one business day of being accepted by Seller in a depository insured by an agency of the U.S. Government. Except as hereinafter set forth, the deposit shall be refunded to Prospective Buyer at any time at Prospective Buyer's option. Prospective Buyer or Seller may instruct Escrow Agent to place the deposit in an interest-bearing account with any interest earned or charges incurred in connection with the account being at or for Prospective Buyer's benefit or cost.
2. Within 15 calendar days of receipt by Seller of the "Public Report" applicable to the Lot issued by the Commissioner of the Arizona Department of Real Estate (the "Department"), Seller shall provide Prospective Buyer with a copy of the Public Report (taking a Required Receipt for Public Report) and a "Proposed Purchase Contract" (as filed with the Arizona Department of Real Estate) for the sale of the Lot to Prospective Buyer. Prospective Buyer or Seller shall have seven business days after Buyer's receipt of the Public Report and Proposed Purchase Contract to enter into a purchase contract to purchase the Lot. If Seller and prospective Buyer do not enter into a purchase contract to purchase the Lot within the seven business day period, this Reservation shall automatically terminate. Seller shall have no cancellation rights other than those set forth in this paragraph.
3. Prospective Buyer may cancel this Reservation at any time before the execution of a purchase contract by delivering written notice of termination to Seller.
4. Within five business days after this Reservation has been terminated for any reason, Seller and Escrow Agent shall refund to the Prospective Buyer the deposit made by prospective Buyer, including any interest monies earned less any account fees agreed upon, if applicable. After this refund neither the Prospective Buyer nor the Seller shall have any obligation to the other arising out of the Reservation.
5. Prospective Buyer may not transfer the rights under this Reservation without the prior written consent of Seller, and any purported transfer without the consent of Seller is voidable at the sole discretion of Seller.
6. If the Department denies the application for Public Report applicable to the Lot, within five days of notification by the Department, Seller shall notify Prospective Buyer in writing and instruct Escrow Agent to return the deposit.
7. Notices hereunder shall be in writing and either hand-delivered or sent by certified mail, return receipt requested, with postage fully prepaid. Notices sent by mail are deemed delivered on the earlier of actual receipt, as evidenced by the delivery receipt, or seven calendar days after being deposited in the U.S. Mail.

**THE ARIZONA DEPARTMENT OF REAL ESTATE HAS NOT INSPECTED OR APPROVED THIS PROJECT AND NO PUBLIC REPORT HAS YET BEEN ISSUED FOR THE PROJECT. NO OFFER TO SELL MAY BE MADE AND NO OFFER TO**

**PURCHASE MAY BE ACCEPTED BEFORE ISSUANCE OF A PUBLIC REPORT FOR THE PROJECT.**

\_\_\_\_\_  
\_\_\_\_\_  
Buyer Seller

\_\_\_\_\_  
\_\_\_\_\_  
Buyer Seller  
Buyer's Address: \_\_\_\_\_

\_\_\_\_\_  
Buyer's Telephone No. \_\_\_\_\_

# EXHIBIT D

EXHIBIT       D       TO  
EX A TO RESOLUTION NO. 20209

When recorded, return to:  
Mary Beth Savel, Esq.  
Lewis and Roca LLP  
One South Church Avenue, Suite 700  
Tucson, Arizona 85701-1611

### SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the City of Tucson, an Arizona municipal corporation ("Grantor"), does hereby grant, sell and convey unto Presidio Terrace LLC, an Arizona limited liability company, the following described real property located in Pima County, Arizona:

See **Exhibit "A"** attached hereto and by this reference made a part hereof (the "Property")

together with all rights, easements and privileges appurtenant thereto.

SUBJECT only to those matters set forth on **Exhibit "B"** attached hereto and by this reference made a part hereof.

Grantor warrants the title to the Property against all acts of Grantor subject only to the matters above set forth.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

STATE of ARIZONA            )  
  ) ss.  
County of Pima                )

                  The foregoing instrument was acknowledged before me this \_\_\_\_ day  
of \_\_\_\_\_, 2005, by \_\_\_\_\_, the  
\_\_\_\_\_ of \_\_\_\_\_, a(n)  
\_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

EXHIBIT "A" TO SPECIAL WARRANTY DEED

[Attach Legal Description of Property]

EXHIBIT A  
EXHIBIT D TO  
EX A TO RESOLUTION NO. 20209



EXHIBIT "B" TO SPECIAL WARRANTY DEED

[Attach Title Exceptions Approved by Purchaser Pursuant to Terms of Purchase and  
Sale Agreement]

EXHIBIT B to  
EXHIBIT D TO  
EX A TO RESOLUTION NO. 20209

# EXHIBIT E

EXHIBIT   E   TO  
EX   A   TO RESOLUTION NO. 20209

## **TEMPORARY REVOCABLE EASEMENT**

For and in consideration of the sum of \$XXXX and other valuable consideration, the City of Tucson, a municipal corporation, hereinafter called City, grants to XXXXXXXXXX hereinafter called Grantee:

**A temporary revocable easement for a monument sign within the XXXXXXXXXX right of way, the location of said easement being shown on the sketch and legal description attached as EXHIBIT "A" and made a part hereof**

and subject to the following terms and conditions:

1. The purpose of this easement is for placement of a monument sign in the XXXXXXXXXXXX right of way, in connection with the Grantee's business known as XXXXXXXXXX. The sign will be built in compliance with the City of Tucson sight visibility triangle requirements and the City of Tucson Sign Code. The sign shall be designed to comply with the City of Tucson Planning Department's General Plan policies and Design Guidelines so that the sign shall be architecturally integrated with the adjoining facility. Grantee shall obtain all necessary permits prior to the installation of the sign. The area shall be Blue Staked in accordance with the provisions of State law prior to any construction activities.
2. The term of this Temporary Revocable Easement is one year, unless otherwise revoked, beginning on the date of approval. This Temporary Revocable Easement shall automatically renew for successive one-year periods unless revoked by the Real Estate Administrator according to the terms of paragraph 7 below.
3. The annual fee for renewal is \$XXX.XX per year from the date of approval. The annual fee is subject to change at any time based on changes to the minimum annual TRE fee of the City of Tucson, or based on market-reflected changes in rental rates for the property. In the event the annual fee is not paid within thirty days of the annual renewal date, a \$50 late fee will be added to the annual renewal fee for each month or portion of a month that the annual fee remains unpaid.
4. The granting of said Temporary Revocable Easement by the City for use of portions of said public right-of-way is not a representation by the City of either the practicability, safety or use of the area, and shall create no liability upon or cause of action against the City.
5. In addition to the liability imposed by law upon the Grantee's negligence, which liability is not impaired or otherwise affected hereby, the Grantee hereby agrees to defend, indemnify and hold harmless the City, its officers, boards, commissions, employees, and agents against and from any and all claims, demands, causes of action, complaints, suits, losses, damages (including damage to City property) injuries and liabilities whatsoever (including those for costs, expenses, and attorney's fees), or any part thereof which arise by reason of injury to any person or persons, including death, or property damage, resulting from any act or omission of the Grantee or anyone directly or indirectly employed by it in the prosecution of any work and maintenance and use of said Temporary Revocable Easement.

6. For so long as said Temporary Revocable Easement shall be in force and effect, the Grantee shall maintain public liability and bodily injury insurance in the amount of \$500,000.00 for each individual person, \$1,000,000.00 for each occurrence and \$100,000.00 property damage for each occurrence, and shall cause the City to be named as co-insured for all purposes under such insurance. Grantee shall require that the insurance carrier shall provide the City with a certificate of coverage containing a provision for a 30-day notice of cancellation. The certificate of insurance shall be kept current and mailed to the City at:

City of Tucson/Real Estate Division  
**ATTN: Property Management**  
P O Box 27210  
Tucson Arizona 85726-7210

Please reference "TRE XXXX-XXX" in the description area of the insurance certificate.

7. This Temporary Revocable Easement shall be revocable at will of the Real Estate Administrator of the City of Tucson. Revocation shall be effected by, and be effective upon giving notice in writing to the Grantee. The Grantee shall remove any and all items within, and any improvements and/or materials used therefore from said Temporary Revocable Easement Area, all at no cost to the City, within 30 days following the request by the City to do so, or the City may remove and dispose of and charge the cost to the Grantee, should Grantee fail to effect such removal.
8. The Grantee shall be barred from collecting damages from the City for the loss, removal or destruction of all items or any improvements and/or materials, or for any resulting or residual damage or injury to Grantee's premises or uses thereof occasioned by the removal of said improvements and/or materials.
9. The proposed construction and TRE area shall be Blue Staked in accordance with the provisions of State law prior to any construction activities. The Grantee and its assignees or successors will assume full responsibility and cost for any damage to existing utility franchise that may be caused by the installation of encroachments by the Grantee or developer that include, but are not limited to, walls, fences or landscaping within the right of way.
10. If any of the said improvements/materials are required to be removed in order for any utility to perform regular maintenance duties/functions, said removal and any replacement of the aforementioned improvements/materials will be accomplished by Grantee at no cost to the utility or the City of Tucson.
11. In the event that this TRE is canceled by the City for failure of the Grantee to comply with any of its terms or conditions, the fee to reinstate this TRE will be \$200.00.
12. Grantee shall not sublet all or any portion of the Premises without the Grantor's prior written consent which shall not be unreasonably withheld. Grantee may assign all of its rights, duties and obligations under this Agreement to any entity which acquires all or substantially all of Grantee's assets in Tucson by reason of a merger, acquisition or other business reorganization, which shall not be deemed a third party assignment. A third party assignment shall require Grantor's consent, and Grantor agrees not to withhold or delay such consent if to do so would be commercially unreasonable. In the event of any valid assignment of this Agreement by Grantee, Grantee shall be and is hereby relieved of all liability under any and all of its covenants and obligations contained in or derived from this Agreement arising out of any act, occurrence or omission occurring after said assignment.

RES No. XXXX-XX

**Grantee (Applicant):**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

COMPANY: \_\_\_\_\_

By (Print): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ARIZONA )

)ss.

COUNTY OF PIMA )

This instrument was acknowledged before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_  
(Grantee)

MY COMMISSION EXPIRES:  
(seal)

\_\_\_\_\_  
Notary Public Signature

RES No. XXXX-XX

**Grantor (City of Tucson):**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

APPROVED AS TO FORM:

\_\_\_\_\_  
Principal Assistant City Attorney

CITY OF TUCSON, a municipal corporation

By: \_\_\_\_\_  
John R. Updike, Real Estate Administrator  
For Mike Hein, City Manager

STATE OF ARIZONA )  
)ss.

COUNTY OF PIMA )

This instrument was acknowledged before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

by \_\_\_\_\_ John R. Updike

MY COMMISSION EXPIRES:  
(seal)

\_\_\_\_\_  
Notary Public Signature